

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

PERIODIC REPORTING RULES

Docket No. RM2018-2

UNITED STATES POSTAL SERVICE COMMENTS REGARDING ORDER NO. 4706
(August 17, 2018)

In these comments, the United States Postal Service (“Postal Service”) addresses issues raised in Order No. 4706,¹ which was released by the Commission on July 12, 2018, and published in the *Federal Register* on July 18, 2018.² The Postal Service appreciates the Commission’s efforts in modifying its rules to resolve the issues raised by the Postal Service in its petition to initiate this docket, and, in general, supports proposed changes to rules 3050.25, 3050.28, and 3050.60. However, with respect to the proposed changes concerning rule 3050.21 (“Proposed Rule 3050.21”), the Postal Service does not share the Commission’s view as to the necessity of the inclusion of all these additional rules in this docket, specifically subpart 21(m) and perhaps subpart 21(j).

In its petition, the Postal Service aimed to initiate a docket for consideration of a procedural, relatively uncontroversial modification of reporting requirements that would enhance the efficiency of the reporting process. By including in this docket a proposal for new reporting requirements applicable to Inbound Letter Post, which are related to

¹ Order No. 4706, Notice of Proposed Rulemaking to Revise the Periodic Reporting Requirements, Docket No. RM2018-2 (July 12, 2018).

² Proposed Rule, Periodic Reporting Requirements, 83 Fed. Reg. 33879 (July 18, 2018).

issues that generated substantial controversy in Docket No. ACR2017,³ the Commission has altered the nature, scope and purpose of this docket. As discussed below, the Postal Service respectfully requests that the Commission reconsider, and ultimately withdraw, the reporting requirements included in Proposed Rule 3050.21(m) for Inbound Letter Post because Proposed Rule 3050.21(m) would require the presentation and organization of information in a format that is unnecessary for the Commission's completion of the annual compliance determination, would increase the likelihood of an incomplete and misleading analysis of the annual financial performance of the Inbound Letter Post product, and inflate the risk of harm from disclosure of commercially sensitive information of the Postal Service and third parties. The Commission should, at the very least, revise the proposed rule.

Background

As background, in its petition initiating this docket, the Postal Service made three requests of the Postal Regulatory Commission: (1) adjust the filing deadlines for certain periodic reports; (2) revise the format of the Monthly Summary Financial Report; and (3) consider eliminating or modifying any reporting requirements that the Commission determines have become unnecessary.⁴ On March 7, 2018, the Public Representative and the United Parcel Service ("UPS") submitted comments concerning the Postal Service proposal for the modification of periodic reporting requirements.⁵ On April 6,

³ See *generally* Order No. 4707, Order Denying Motion for Reconsideration of Order No. 4451 as Moot, Docket No. ACR2017 (July 12, 2018) (describing orders and submissions defending and opposing nonpublic status of Inbound Letter Post data).

⁴ United States Postal Service Petition for Rulemaking on Periodic Reporting, Docket No. RM2018-2 (Dec. 27, 2017), at 1.

⁵ Public Representative Comments on Advance Notice of Proposed Rulemaking to Revise Periodic Reporting Requirements, Docket No. RM2018-2 (March 7, 2018); Comments of United Parcel Service, Inc. on Advance Notice of Proposed Rulemaking to Revise Periodic Reporting Requirements, Docket No. RM2018-2 (March 7, 2018).

2018, the Postal Service and the Parcel Shippers Association (“PSA”) filed reply comments addressing the comments of the Public Representative and UPS.⁶

In Order No. 4706, the Commission addressed the comments and reply comments included in this docket and proposed changes to the modification of reporting requirements requested by the Postal Service. These changes focus on the timing and structure of monthly and quarterly reports, the presentation of mail fees and workhour data in the Annual Compliance Review (“ACR”) dockets, and the presentation of Inbound Letter Post information provided in the ACR dockets. However, without prompting by any participant in this docket, the Commission introduced an entirely new concept in this rulemaking by including Proposed Rule 3050.21(m), which would require the Postal Service to “provide [Inbound Letter Post] revenue, volume, attributable cost, and contribution data by Universal Postal Union country group and by shape for the preceding five fiscal years.”⁷

Proposed Changes to Rules 3050.25, 3050.28, and 3050.60

The Postal Service supports the Commission’s proposed modifications to 39 C.F.R. §§ 3050.25, 3050.28, and 3050.60, with two minor exceptions relating to the format of Table 1, “USPS Monthly Financial Statement,” in the Monthly Summary Financial Report. Specifically, Proposed Rule 3050.28(b)(1) sets forth a revised format for Table 1 which includes only two inputs under the heading, “Revenue”: Operating Revenue and Other Revenue.⁸ In discussing its proposed changes to Table 1 in the text of Order No. 4706, however, the Commission explained that it was proposing to

⁶ Reply Comments of the United States Postal Service, Docket No. RM2018-2 (April 6, 2018); Reply Comments of the Parcel Shippers Association (PSA), Docket No. RM2018-2 (April 6, 2018).

⁷ Order No. 4706, at 22.

⁸ *Id.* at 23.

add a third input, “Total Revenue,” reflecting the combined sum of Operating Revenue and Other Revenue.⁹ The Commission’s intent appears to have been to include this third input, whose inclusion the Postal Service supports. The Postal Service therefore recommends that “Total Revenue” be added to the format for Table 1, immediately above the “Operating Expenses” heading. In addition, the Postal Service recommends that the input, “New Operating Income,” be changed to “Net Operating Income,” consistent with the existing version of Table 1 in Rule 3050.28(b)(1). “New” conveys a different meaning than “Net” in this context, and the Commission did not indicate an intent to modify this input in Order No. 4706.

Proposed Changes to Rule 3050.21(f)(6), (j), (k), and (l)

The Commission proposed the addition of several items to the material required to be routinely provided with the ACR submission each year. Proposed Rule 3050.21(f)(6) would require additional information on noncompensatory bilateral agreements. Proposed Rule 3050.21(j) would require submission with the ACR of a distribution breakdown of mail fees for market dominant and competitive products. Proposed Rule 3050.21(k) would require submission of information on international product third-party service performance measurement. Proposed Rule 3050.21(l) would require submission with the ACR of total workhour and related data by Labor Distribution Code (“LDC”). Because, as the Order notes, the Postal Service has been routinely providing these types of information pursuant to Information Requests, the Postal Service agrees that, at least in theory, inclusion of these types of material with the initial ACR filing would likely be more efficient.

⁹ *Id.* at 11.

Accordingly, if these proposals were adopted, the Postal Service anticipates that the material requested by Proposed Rule 3050.21(f)(6) would be provided each year in the same place that it was provided in FY 2017, as part of ACR folder NP2.¹⁰ Similarly, the Postal Service anticipates that the material requested by Proposed Rule 3050.21(k) would be provided as an additional component of ACR folder NP9 (e.g., for next year, in USPS-FY18-NP9). And correspondingly, the Postal Service anticipates that the material requested by Proposed Rule 3050.21(l) would be provided as an additional component of ACR folder 7 (e.g., for next year, in USPS-FY18-7).

The Postal Service notes, however, that the situation with respect to the fee distribution material requested by Proposed Rule 3050.21(j) is somewhat more complicated. As the Order indicates, the type of fee distribution material in question was most recently requested in Docket No. ACR2017, in response to ChIR No. 7, Question 3 (ChIR filed on January 23, 2018). Similar information was previously requested in Docket No. ACR2016, ChIR No. 11, Question 2 (January 27, 2017), and also in Docket No. ACR2015, ChIR No. 8, Question 1 (February 3, 2016). In each of those three years, the Information Requests sought similar information, but in each year, also explicitly provided public and nonpublic Excel files containing a specific format for response, and those formats varied year-to-year in ways that are not entirely transparent. Nonetheless, one can reasonably surmise that these changes in format were rooted in changes in circumstances (e.g., new products, new product names, product adjustments and transfers) that had occurred since the previous year's request.

¹⁰ Specifically, for FY 2017, the requested comparison appeared the "MD Agreements vs UPU Rates" tab in the NSA Summary (Unified).xls Excel file in the ICM Costing directory of USPS-FY17-NP2, and the Postal Service thus anticipates that next year the comparable information would appear in the same place in USPS-FY18-NP2.

Page 14 of the Order would perhaps appear to suggest that the format of the fee distribution material requested in the proposed rule each year should merely match the format of what was requested and provided in the most recent ACR (Docket No. ACR2017). Yet the Postal Service anticipates that the same types of changes in circumstances that occurred between FY 2015 and FY 2016 and FY 2017 will continue to occur in each future year. In particular, there may be more product adjustments and transfers going forward. It seems almost certain, therefore, that future changes in format will be necessary, inevitably raising the question as to what might be the most appropriate procedural mechanism to handle these entirely foreseeable developments.

The Postal Service sees two plausible options. If the Commission wishes to retain the ability to do its own assessment each year and continue, as it has done in the past, to specify exactly the format in which fee distributions should be conducted and displayed for that year, then the ChIR procedure used up to this point would seem most appropriate. Specifically, the Commission could continue to use an Excel attachment to an Information Request as a vehicle to specify the distribution format established for that year. In that case, though, the provision establishing fee distribution information as a newly-required element of the initial ACR submission should be omitted from the proposed rule. Alternatively, if the Commission is satisfied that a good-faith effort on the part of the Postal Service to make reasonable updates to the format each year would likely be sufficient, then the rule as proposed would achieve that objective. What the Postal Service seeks to avoid, however, is a situation in which it makes its best effort to provide fee distributions in the initial ACR filing, but then routinely has to duplicate the fee distribution exercise on the basis of a different format specified in a subsequent

Information Request.¹¹ In that regard, therefore, the Postal Service requests that the Commission give some consideration to which of these equally plausible procedural approaches would best conserve its own resources, and those of the Postal Service. If that review leads to the conclusion that the proposed new approach still seems most suitable to achieve the intended purpose, a conclusion to which the Postal Service has no *a priori* objection, the Postal Service anticipates that the material requested by Proposed Rule 3050.21(j) would then be provided as additional components of ACR folders 4 and NP1 (e.g., for next year, in USPS-FY18-4 and USPS-FY18-NP1).

Proposed Changes to Rule 3050.21(m)

Proposed Rule 3050.21(m) should be excluded from the final rule because it seeks a modification of the format of the Inbound Letter Post information submitted in the ACR that is unrelated to the Commission's performance of its annual compliance determination, would encourage an incomplete and misleading analysis of the financial performance of Inbound Letter Post, and create a risk of significant harm from disclosure of commercially sensitive data of at least one third party and the Postal Service.

As an initial matter, although Proposed Rule 3050.21(m) is applicable to ACR reporting, there is no justification for the separation of Inbound Letter Post information by Universal Postal Union ("UPU") country group or shape for purposes of the ACR. In an attempt to support the new requirements included in Proposed Rule 3050.21(m), the Commission repeats the obsolete narrative regarding past performance of the Inbound

¹¹ Note that the intrinsic nature of a distribution exercise is such that any change in the number of rows over which the distribution is made, no matter how small, would necessarily require a recalculation of the share of the total distributed to all other rows.

Letter Post product from its orders in previous dockets.¹² However, the rate structure associated with Inbound Letter Post changed significantly on January 1, 2018, as the new UPU terminal dues that went into effect on that date are expected to result in a considerable improvement in the financial performance of Inbound Letter Post.¹³ In the years that correspond to the Commission's previous analysis of the financial performance of Inbound Letter Post cited by the Commission, the UPU terminal dues rate structure was far less favorable than the one in effect today. In addition, as described below, in its review of the financial performance of Inbound Letter Post in the cited ACR dockets, the Commission limited its analysis to only one source of inbound letter post revenue, and excluded multiple sources of additional revenue attributable to inbound letter post.¹⁴

Not only are the Commission's conclusions in previous ACR dockets inapplicable to the current and future financial performance of Inbound Letter Post, but also representations concerning the past financial performance of Inbound Letter Post provide no justification for new reporting requirements focused on data separation by UPU country group and shape. For the development of its annual compliance determination, the Commission does not need data measured at the shape or country group level. In fact, the Postal Service submitted disaggregated FY2016 revenue data in Docket No. ACR2017,¹⁵ and these data were not used in the annual compliance

¹² See Order No. 4706 at 16-18 (citing ACR dockets from 2007 to 2017, and IM dockets from 1998 to the present).

¹³ United States Postal Service FY 2017 Annual Compliance Report, Docket No. ACR2017 (Dec. 29, 2017), at 9.

¹⁴ See discussion in Responses of the United States Postal Service to Questions 1-11 of Commission Information Request No. 1, Docket No. PI2018-1 (Aug. 1, 2018).

¹⁵ Response of the United States Postal Service to Question 1 of Chairman's Information Request No. 15, Docket No. ACR2017 (Feb. 14, 2018).

determination for that docket.¹⁶ Instead, the Commission relied on more aggregated data provided by the Postal Service in Library Reference PRC-LR-ACR2017/NP2.¹⁷ The five-year reporting period included in Proposed Rule 3050.21(m) raises additional concerns because a review of the requested data separated by UPU country group over a five-year period is unlikely to be useful due to year-to-year changes in the composition of UPU country groups, and the ability of the Postal Service to produce shape-based data for previous years is uncertain due to data limitations.

In addition to the lack of justification for the disaggregation of Inbound Letter Post data by UPU country group or shape, any modification of ACR reporting requirements related to Mail Classification Schedule (“MCS”) Section 1130 Inbound Letter Post that does not address the entirety of Postal Service revenue for inbound letter post will encourage the use of data that support an incomplete and inaccurate evaluation of the financial performance of inbound letter post. As explained in the Postal Service’s reply comments in Docket No. ACR2017,¹⁸ and in the Postal Service’s comments in the PI2018-1 docket,¹⁹ an effective assessment of the financial performance of inbound letter post must include volume from negotiated agreements and all sources of supplemental revenue for inbound letter post. The Postal Service receives inbound letter post revenue from numerous sources, including supplemental UPU remuneration for signature confirmation and tracking (or remuneration through PRIME for tracking) on

¹⁶ See Annual Compliance Determination Report, Fiscal Year 2017, Docket No. ACR2017 (March 29, 2018).

¹⁷ *Id.* at 65-69.

¹⁸ Reply Comments of the United States Postal Service on Inbound Letter Post, Docket No. ACR2017 (Feb. 27, 2018), at 2-4.

¹⁹ See discussion in Responses of the United States Postal Service to Questions 1-11 of Commission Information Request No. 1, Docket No. PI2018-1 (Aug. 1, 2018).

registered items;²⁰ PRIME multilateral agreements (extra payments for tracking);²¹ negotiated rates under bilateral agreements;²² air conveyance dues from some countries; and base terminal dues. However, based on previous Commission practice, it appears that Proposed Rule 3050.21(m) would rely on the classification of MCS section 1130 Inbound Letter Post as a stand-alone product limited to revenue from base terminal dues and air conveyance dues, without consideration of the full set of revenue sources for inbound letter post that appear in various discrete classifications in the MCS as described above.

To achieve its goal of “more accurately identify[ing] issues within the Inbound Letter Post product and ... appropriate remedial actions,”²³ it would be more effective for the Commission to modify Inbound Letter Post reporting requirements to direct the Postal Service’s production of an aggregated portrait of all sources of inbound letter post revenue, rather than to maintain reporting requirements that facilitate a limited and inaccurate analysis of only one subset of inbound letter post data related to MCS section 1130 Inbound Letter Post. As explained in the Postal Service’s response to Commission Information Request No. 1 in Docket No. PI2018-1,²⁴ the Commission’s review of the financial performance of Inbound Letter Post in the ACR docket should include not only revenue attributable to the Inbound Letter Post product (MCS section

²⁰ MCS §§ 1510.2.2 (International Ancillary Services, Inbound International Registered Mail), 1602.5 (Negotiated Service Agreements, International, Inbound Market Dominant Registered Service Agreement 1) (July 15, 2018) (available at <https://www.prc.gov/mail-classification-schedule>).

²¹ MCS §§ 1602.4 (Negotiated Service Agreements, International, Inbound Market Dominant Express Service Agreement 1), 1602.6 (Negotiated Service Agreements, International, Inbound Market Dominant PRIME Tracked Service Agreement) (July 15, 2018) (available at <https://www.prc.gov/mail-classification-schedule>).

²² MCS § 1602.3 (Negotiated Service Agreements, International, Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators) (July 15, 2018) (available at <https://www.prc.gov/mail-classification-schedule>).

²³ Order No. 4706, at 18.

²⁴ Responses of the United States Postal Service to Questions 1-11 of Commission Information Request No. 1, Docket No. PI2018-1 (Aug. 1, 2018), at 5.

1130), but also Inbound International Registered Mail (part of MCS section 1510.2), the PRIME Expres Service Agreement (MCS section 1602.4), the PRIME Tracked Service Agreement (MCS section 1602.6), Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MCS section 1602.3), and the PRIME Registered Service Agreement (MCS section 1602.5).²⁵ To enable a more comprehensive and accurate assessment of the financial performance of inbound letter post, as an alternative to the Commission's proposal, Proposed Rule 3050.21(m) could be revised to state the following:

(m) Provide a supplemental presentation of Inbound Letter Post revenue and costs that includes inbound revenue and costs reported in relation to Mail Classification Schedule (MCS) sections 1130, 1510.2, and 1602.

Finally, as explained by the Postal Service in Docket No. ACR2017,²⁶ with its reasons incorporated by reference, the presentation of Inbound Letter Post revenue information separated by country group and shape would be exempt from mandatory public disclosure under 39 U.S.C. § 410(c)(2) (which applies specifically to the Postal Service), as well as under the Freedom of Information Act ("FOIA") Exemption 4.²⁷ Although this information, if required, would be filed under seal, and the proposed rule does not require public disclosure, litigation in Docket No. ACR2017 suggests that a

²⁵ Related revenue from the UPU Registered supplementary remuneration program, which the Postal Service participates in, is included within the part of MCS section 1510.2 that concerns Inbound International Registered Mail. As background, see UPU Designated operators exchanging data events for the purpose of measuring and improving quality performance, with or without payment of supplementary remuneration, Q3 2018 Participation List Valid until 30.09.2018 Updated, 02.07.2018, available at <http://www.upu.int/fileadmin/documentsFiles/activities/letterPostDevelopment/listCountriesSupRemEn.pdf>.

²⁶ United States Postal Service Motion for Reconsideration of Order No. 4451, Docket No. ACR2017 (April 6, 2018); Response of the United States Postal Service to Order No. 4409, Docket No. ACR2017 (Feb. 23, 2018); United States Postal Service Notice of Filing Nonpublic Folder USPS-FY17-NP40 and Application for Nonpublic Treatment, Docket No. ACR2017 (Feb. 14, 2018) ("NP40 Notice and Application").

²⁷ 5 U.S.C. § 552(b)(4).

nonpublic filing of such information would be challenged, and the nonpublic treatment would be disputed and at risk.²⁸ Previous disagreements regarding the status of such information focused on the Commission's legal analysis, and specifically on the extent of the Commission's reliance in its analysis on the market-dominant status of Inbound Letter Post. In any event, the outcome of Docket No. PI2018-1 could have a significant impact on the classification of Inbound Letter Post and the analysis of the status of Inbound Letter Post information separated by shape and UPU country group. All of these factors militate in favor of the presumption that the seal should continue to be extended to disaggregated Inbound Letter Post data.

Conclusion

As explained above, in general, the Postal Service agrees with the Commission's proposed changes to rules 3050.25, 3050.28, 3050.60, and some portions of 3050.21. However, for the reasons discussed above, Proposed Rule 3050.21(m) should be excluded from the final rule adopted in connection with this docket, or else replaced with the following revised version of Proposed Rule 3050.21(m) discussed earlier in these comments:

(m) Provide a supplemental presentation of Inbound Letter Post revenue and costs that includes inbound revenue and costs reported in relation to Mail Classification Schedule (MCS) sections 1130, 1510.2, and 1602.

Respectfully submitted,

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²⁸ *Supra* note 3.

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